

# **SL(6)431 – The Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023**

## **Background and Purpose**

These Regulations amend various existing Regulations relating to student finance.

These Regulations are split into nine Parts:

- Part 1 makes provision about the coming into force and application of these Regulations;
- Part 2 amends the Education (Fees and Awards) (Wales) Regulations 2007 (“the 2007 Regulations”);
- Part 3 amends the Education (European University Institute) (Wales) Regulations 2014 (“the 2014 Regulations”);
- Part 4 amends the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 (“the 2015 Regulations”);
- Part 5 amends the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”);
- Part 6 amends the Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”);
- Part 7 amends the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 (“the Doctoral Degree Loan Regulations”);
- Part 8 amends the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 (“the 2019 Regulations”); and
- Part 9 makes savings in respect of the 2014 Regulations and the 2018 Regulations.

The amendments made by these Regulations:

- update the categories of eligible students in the 2014 Regulations, the 2017 Regulations, the 2018 Regulations, the Doctoral Degree Loan Regulations and the 2019 Regulations and make corresponding changes to the 2007 Regulations and the 2015 Regulations, to include certain family members of persons who are granted leave to enter or remain in the United Kingdom under the Afghan or Ukraine related immigration schemes;
- update the definition of a “person with leave to enter or remain as a relevant Afghan citizen” in the 2014 Regulations as a result of changes to the immigration rules.
- omit obsolete references to Scottish Regulations in the 2017 Regulations and the 2018 Regulations;



- require distance learning students to be in Wales on the first day of the first academic year to qualify for a grant for deoendants, unless an exception applies, under the 2018 Regulations; and
- provide for early termination of eligibility under the Doctoral Degree Loan Regulations and the 2019 Regulations, where a student ceases to have certain types of leave to enter, or remain in, the United Kingdom.

## Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

The following eight points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation**

In regulation 5(b), in the new definition of “person with leave to enter or remain as a relevant Afghan citizen”, in paragraph (a), there is a reference to “paragraph 276BA2 of the immigration rules”. However, “paragraph 276BA2” is shown as “deleted” in the immigration rules on the UK Government’s website. It is unclear if this reference require updating in the definition or if it is referring to Afghan citizens who have already been given indefinite leave to enter the United Kingdom under that paragraph. There are also other references to “paragraph 276BA2” in the amendments found in regulations 9(a) and 16(b).

### **2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation**

In regulations 19(b), 21(b) and 22(b), the amendments appear to be incorrectly drafted as the words “is allowed to stay in the United Kingdom” will be missing from the new text as amended.

For example, as a result of the amendment found in regulation 19(b) of these Regulations, the new text of regulation 4(10F)(b) of the Education (Student Support) (Wales) Regulations 2017 will read as follows:

*“...the period for which [the person granted leave to enter or remain] as a protected Ukrainian national has expired and no further leave to enter or remain has been granted...”*



However, it does appear that the words “for which” require the additional words “is allowed to stay in the United Kingdom” to complete the meaning of the sentence, particularly when compared with other amendments made by these Regulations (e.g., regulations 12(b) and 63). If those words were included, the amended text would read as follows:

*“...the period for which [the person granted leave to enter or remain] as a protected Ukrainian national [**is allowed to stay in the United Kingdom**] has expired and no further leave to enter or remain has been granted...”*

Therefore, these amendments require further explanation as to whether these additional words should also have been included in the final text as amended by regulations 19(b), 21(b) and 22(b) of these Regulations.

### **3. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 36(c)(i) and (ii), the locations of the existing text for the amendments are incorrectly described as “**sub**-paragraph (aa)” and “**sub**-paragraph (ab)” respectively but they should be described as “**paragraph** (aa)” and “**paragraph** (ab)”.

### **4. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 55(a) and (b), the locations of the existing text for the amendments are incorrectly described as “**sub**-paragraph (b)” but should be described as “**paragraph** (b)”.

### **5. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 56, the new definitions are described as being inserted “at the appropriate place in alphabetical order” in Table 16 of Schedule 7 to the Education (Student Support) (Wales) Regulations 2018. However, the new definitions haven’t been listed in alphabetical order in either the English or Welsh texts of regulation 56. The second definition ““leave application date” (for the purpose of determining if a person is a protected partner or a child of a protected partner)” should appear before the first definition in the list of both language texts if they are to be alphabetically ordered when inserted in Table 16 of Schedule 7. In addition, the formatting of the list of table entries is confusing as a single horizontal line appears after the first definition in the English and Welsh texts, and there are also additional lines in the middle of the same definition at the bottom and top of pages 25 and 26 in the Welsh text.



## 6. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 56, in the Welsh text, there appears to be an historical error which is maintained in the final new definition of “leave application date” found in the list for “Schedule 2, paragraph 3”. The definition is translated as “dyddiad y cais i gael caniatâd **i aros**” unlike the other definitions in the list which are translated as “dyddiad y cais i gael caniatâd i ddod **i mewn neu i aros**”. It is true that “dyddiad y cais i gael caniatâd i aros” is the definition that has been used in the Welsh text of paragraph 3(2)(b), (3)(b) and (5) of Schedule 2 to the Education (Student Support) (Wales) Regulations 2018. But the meaning of “leave application date” in paragraph 3(5) of Schedule 2 to those Regulations is given as “the date on which the person with leave **to enter or remain** made the application that led to that person being granted leave **to enter or remain** in the United Kingdom”. Therefore, the existing translation of that term is incorrect because it means “leave **to remain** application date” rather than “leave **to enter or remain** application date”, and that historical error is maintained by the Welsh definition listed for “Schedule 2, paragraph 3” by regulation 56 of these Regulations. The Welsh text should state “dyddiad y cais i gael caniatâd i ddod i mewn neu i aros” as used for the other entries listed in regulation 56.

## 7. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 80(3), in the Welsh text, the definition “current Afghan scheme student” has been translated and defined as “myfyriwr **presennol** sydd ar y cynllun **Afghanistan**” for the purposes of that regulation. However, this isn’t the term that has actually been used in the Welsh text of regulation 80(1) which is “myfyriwr **cyfredol** sydd ar y cynllun **Affganistan**” (the term that was previously defined and used consistently in the Welsh text of regulation 79). It also means that the Welsh definition found in italics and brackets immediately after the definition of “current Afghan scheme student” in the English text of regulation 80(3) is incorrect.

## 8. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 80(3), in the English text, both the definitions of “relevant course” and “relevant student” do not include the corresponding Welsh definition in italics and brackets afterwards.

## Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.



**9. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph 5.1 of the Explanatory Memorandum:

*“A consultation has not been carried out as some of the amendments are required to correct and update law arising from changes to Immigration Rules and to remove redundant regulatory provision. Other amendments which extend eligibility to student support ... the Welsh Government’s policy on being a ‘Nation of Sanctuary’”.*

**Welsh Government response**

A Welsh Government response is required in respect of reporting points 1-8.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**10 January 2024**

